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**\*\*FILED\*\***  
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**U.S. EPA - REGION IX**

7 UNITED STATES  
8 ENVIRONMENTAL PROTECTION AGENCY  
9 REGION IX

10 In the matter of: ) Docket No. FIFRA-09-2021-0041  
11 )  
12 Bear River Supply Inc., ) CONSENT AGREEMENT  
AND FINAL ORDER  
13 Respondent. ) pursuant to 40 C.F.R. §§ 22.13(b),  
22.18(b)(2), and 22.18(b)(3)  
14 )

15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency ("EPA"), Region IX, and Bear River  
17 Supply Inc. ("Respondent") agree to settle this matter and consent to the entry of this Consent  
18 Agreement and Final Order ("CAFO"). This CAFO simultaneously initiates and concludes this  
19 proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

20 A. AUTHORITY AND PARTIES

21 1. This is a civil administrative action brought pursuant to Section 14(a)(1) of the Federal  
22 Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a)(1), for the assessment  
23 of a civil administrative penalty against Respondent for violations of Sections 12(a)(1)(E),  
24 12(a)(2)(L), and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E), 136j(a)(2)(L), and  
25 136j(a)(2)(S).

26 2. Complainant is the Manager of the Toxics Section in the Enforcement and  
27 Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to  
28 bring this action and to sign a consent agreement settling this action.

1           3. Respondent is Bear River Supply Inc., a California corporation with headquarter  
2 offices located at 218 Pleasant Grove Road in Rio Oso, California, 95674.

3                           B. STATUTORY AND REGULATORY BASIS

4           4. Under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any  
5 person in any state to distribute or sell to any person any pesticide that is adulterated or  
6 misbranded.

7           5. Under Section 2(s) of FIFRA, 7 U.S.C. § 136(s), the term “person” means “any  
8 individual, partnership, association, corporation, or any organized group of persons whether  
9 incorporated or not.”

10          6. Under Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the term “to distribute or sell”  
11 means to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment,  
12 ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or  
13 offer to deliver.

14          7. Under Section 2(u) of FIFRA, 7 U.S.C. § 136(u), the term “pesticide” is, among other  
15 things, any substance or mixture of substances intended for preventing, destroying, repelling, or  
16 mitigating any pest.

17          8. Under Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), a pesticide is  
18 “misbranded” if its labeling bears any statement, design, or graphic representation relative thereto  
19 or to its ingredients which is false or misleading in any particular.

20          9. Under Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), the term “label” means the  
21 written, printed, or graphic matter on, or attached to, the pesticide or device or any of its  
22 containers or wrappers.

23          10. Under Section 2(p)(2)(A) of FIFRA, 7 U.S.C. § 136(p)(2)(A), the term “labeling”  
24 means all labels and all other written, printed or graphic matter accompanying the pesticide or  
25 device at any time.

26          11. Under Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), it is unlawful for any  
27 person who is a producer to violate any of the provisions of Section 7.

28          12. Under Section 2(w) of FIFRA, 7 U.S.C. § 136(w), the term “producer” means the

1 person who manufactures, prepares, compounds, propagates, or processes any pesticide or device  
2 or active ingredient used in producing a pesticide.

3 13. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), provides that no person shall produce a  
4 pesticide subject to FIFRA in any State unless the establishment in which it is produced is  
5 registered with the EPA.

6 14. Under Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), the term “establishment” means  
7 any place where a pesticide or device or active ingredient used in producing a pesticide is  
8 produced, or held, for distribution or sale.

9 15. Under Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), it is unlawful for any  
10 person to violate any regulation issued under Sections 3(a) or 19 of FIFRA, 7 U.S.C. §§ 136a(a)  
11 and 136q.

12 16. Pursuant to FIFRA, 7 U.S.C. §§ 136-136y, the EPA Administrator promulgated  
13 regulations governing the labeling requirements for pesticides and devices, which are codified at  
14 40 C.F.R. Part 156.

15 17. Pursuant to Sections 3, 8, 19, and 25 of FIFRA, 7 U.S.C. §§ 136a, 136f, 136q, and  
16 136w, the EPA Administrator promulgated regulations pertaining to standards for pesticide  
17 containers and pesticide containment structures (“the Container/Containment Regulations”),  
18 which are codified at 40 C.F.R. Part 165 and 40 C.F.R. §§ 156.140-156.159.

19 18. “Agricultural pesticide” means any pesticide product labelled for use in or on a farm,  
20 forest, nursery, or greenhouse. 40 C.F.R. § 165.3.

21 19. “Containment pad” means any structure that is designed and constructed to intercept  
22 and contain pesticides, rinsates, and equipment wash water at a pesticide dispensing area. 40  
23 C.F.R. § 165.3.

24 20. “Containment structure” means either a secondary containment unit or a containment  
25 pad. 40 C.F.R. § 165.3.

26 21. “Establishment” means any site where a pesticidal product, active ingredient, or  
27 device is produced, regardless of whether such site is independently owned or operated, and  
28 regardless of whether such site is domestic and producing a pesticidal product for export only, or

whether the site is foreign and producing any pesticidal product for import into the United States.  
40 C.F.R. § 165.3.

22. “Facility” means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person who controls, who is controlled by, or who is under common control with such person). 40 C.F.R. § 165.3.

23. “Operator” means any person in control of, or having responsibility for, the daily operation of a facility at which a containment structure is located. 40 C.F.R. § 165.3.

24. “Owner” means any person who owns a facility at which a containment structure is required. 40 C.F.R. § 165.3.

25. “Pesticide dispensing area” means an area in which pesticide is transferred out of or into a container. 40 C.F.R. § 165.3.

26. “Produce” means to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to Section 5 of the Act, and any active ingredient or device, or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device. 40 C.F.R. § 165.3.

27. “Producer” means any person, as defined by the Act, who produces any pesticide, active ingredient, or device (including packaging, repackaging, labeling, and relabeling). 40 C.F.R. § 165.3.

28. “Refilling establishment” means an establishment where the activity of repackaging pesticide product into refillable containers occurs. 40 C.F.R. § 165.3.

29. “Refillable container” means a container that is intended to be filled with pesticide more than once for sale or distribution. 40 C.F.R. § 165.3.

30. “Refiller” means a person who engages in the activity of repackaging pesticide product into refillable containers. 40 C.F.R. § 165.3.

31. “Repackage” means, for the purposes of this part, to transfer a pesticide formulation from one container to another without a change in the composition of the formulation, the labeling content, or the product’s EPA registration number, for sale or distribution. 40 C.F.R. §

1 165.3.

2 32. "Secondary containment unit" means any structure, including rigid diking, that is  
3 designed and constructed to intercept and contain pesticide spills and leaks and to prevent runoff  
4 and leaching from stationary pesticide containers. 40 C.F.R. § 165.3.

5 33. "Stationary pesticide container" means a refillable container that is fixed at a single  
6 facility or establishment or, if not fixed, remains at the facility or establishment for at least 30  
7 consecutive days, and that holds pesticide during the entire time. 40 C.F.R. § 165.3.

8 C. ALLEGED VIOLATIONS

9 34. Respondent is a "person" as that term is defined by Section 2(s) of FIFRA, 7 U.S.C.  
10 § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

11 35. Respondent is an "owner" and "operator" of two "facilities" that are each  
12 "establishments," as those terms are defined by 40 C.F.R. § 165.3, located at: (1) 218 Pleasant  
13 Grove Road in Rio Oso, California (the "Pleasant Grove Establishment"); and (2) 348 Swetzer  
14 Road in Rio Oso, California (the "Swetzer Road Establishment") (collectively, "the Two  
15 Establishments").

16 36. At all times relevant to this CAFO, Respondent was a "refiller" that "repackaged"  
17 and dispensed the following "pesticides" at the following "refilling establishments" whose  
18 principal business is retail sale, as those terms are defined by 40 C.F.R. § 165.3:

19 a. Vistaspray 440 Spray Oil (EPA Reg. No. 90784-2) at the Pleasant Grove  
20 Establishment; and

21 b. Roundup PowerMax (EPA Reg. No. 524-549) at the Swetzer Road  
22 Establishment.

23 As such, the Two Establishments and the pesticides they repackaged are subject to the  
24 Container/Containment Regulations.

25 37. At all times relevant to this CAFO, Vistaspray 440 Spray Oil and Roundup  
26 PowerMax were "agricultural pesticides," as that term is defined by 40 C.F.R. § 165.3.

27 38. At all times relevant to this CAFO, the Two Establishments included areas used to  
28 fill containers with agricultural pesticides and/or areas used to refill stationary tanks with these



1 pesticides. Each of these areas is both a “pesticide dispensing area” and a “containment pad,” as  
2 those terms are defined by 40 C.F.R. § 165.3.

3 39. At all times relevant to this CAFO, the Two Establishments included “stationary  
4 pesticide containers” with agricultural pesticides and associated “secondary containment units,”  
5 as those terms are defined by 40 C.F.R. § 165.3.

6 40. Owners or operators of refilling establishments who repackage agricultural pesticides  
7 and whose principal business is retail sale and that have a stationary pesticide container or a  
8 pesticide dispensing (including container refilling) area must comply with the secondary  
9 containment requirements of the Container/Containment Regulations. 40 C.F.R. § 165.80(b)(1).

10 41. The containment pads in the pesticide dispensing areas and the secondary  
11 containment units at the Two Establishments were constructed after November 16, 2006 and are  
12 each “new containment structures,” as that term is defined by 40 C.F.R. § 165.83(a).

13 42. Inspections were conducted by a California Department of Pesticide Regulation  
14 (“CDPR”) inspector on or about January 12, 2018 at the Two Establishments. Follow-up  
15 inspections were conducted by an EPA Region IX inspector on or about November 14, 2019 at  
16 the Two Establishments.

#### 17 PLEASANT GROVE ESTABLISHMENT

##### 18 COUNTS 1-2: Distribution or Sale of a Misbranded Pesticide

19 43. When pesticide products are stored in bulk containers, whether mobile or stationary,  
20 which remain in the custody of the user, a copy of the label or labeling, including all appropriate  
21 directions for use, must be securely attached to the container in the immediate vicinity of the  
22 discharge control valve. 40 C.F.R. § 156.10(a)(4)(ii)(B). Every pesticide product shall bear a  
23 label containing, *inter alia*, the net contents as prescribed in paragraph (d) of this section and the  
24 producing establishment number as prescribed in paragraph (f) of this section. 40 C.F.R. §  
25 156.10(a)(1). Pursuant to Section 2(q)(1)(A) of the Act, a pesticide is misbranded if its labeling  
26 is false or misleading in any particular including both pesticidal and non-pesticidal claims. 40  
27 C.F.R. § 156.10(a)(5).

28 44. On or about January 12, 2018, Respondent “distributed or sold” the pesticide,

1 Vistaspray 440 Spray Oil, in a 6,500 gallon bulk stationary pesticide container at the Pleasant  
2 Grove Establishment, as that term is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), by  
3 holding the pesticide for distribution, sale, or shipment.

4 45. On or about November 14, 2019, Respondent “distributed or sold” the pesticide,  
5 Vistaspray 440 Spray Oil, in a 6,500 gallon bulk stationary pesticide container at the Pleasant  
6 Grove Establishment, as that term is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), by  
7 holding the pesticide for distribution, sale, or shipment.

8 46. On or about January 12, 2018, and November 14, 2019, Respondent failed to have a  
9 label attached to the 6,500 gallon bulk stationary pesticide container containing Vistaspray 440  
10 Spray Oil at the Pleasant Grove Establishment that clearly marked or identified the net contents  
11 or producing establishment number, as required by 40 C.F.R. §§ 156.10(a)(4)(ii)(B) and  
12 156.10(a)(1). Moreover, the presence of multiple producing establishment numbers on the label  
13 attached to the 6,500 gallon bulk stationary pesticide container containing Vistaspray 440 Spray  
14 Oil at the Pleasant Grove Establishment resulted in contradictory or confusing claims that  
15 inherently rendered the labeling as “false or misleading” per 40 C.F.R. § 156.10(a)(5).

16 47. Respondent’s failure to clearly mark or identify the net contents or producing  
17 establishment number on the label attached to the 6,500 gallon bulk stationary pesticide container  
18 containing Vistaspray 440 Spray Oil at the Pleasant Grove Establishment, as required by 40  
19 C.F.R. §§ 156.10(a)(4)(ii)(B) and 156.10(a)(1), as well as the “false or misleading” labeling  
20 identified per 40 C.F.R. § 156.10(a)(5), constitutes “misbranding,” as that term is defined by  
21 Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).

22 48. Consequently, on or about January 12, 2018, and November 14, 2019, Respondent’s  
23 distribution or sale of the pesticide, Vistaspray 440 Spray Oil, in a 6,500 gallon bulk stationary  
24 pesticide container at the Pleasant Grove Establishment constitutes two violations of Section  
25 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), which prohibits a person from distributing or  
26 selling a misbranded pesticide.

27 COUNT 3: Failure to Meet Capacity Requirements for a New Secondary Containment Unit

28 49. New secondary containment units for stationary containers of liquid pesticides must

1 meet the capacity requirements set forth at 40 C.F.R. § 165.85(c). In particular, new secondary  
2 containment units for stationary containers of liquid pesticides, if protected from precipitation,  
3 must have a capacity of at least 100% of the volume of the largest stationary pesticide container  
4 plus the volume displaced by other containers and appurtenances within the unit. 40 C.F.R. §  
5 165.85(c)(1).

6 50. On or about January 12, 2018, a CDPR inspector observed a new secondary  
7 containment unit for a 6,500-gallon stationary container of liquid Vistaspray 440 Spray Oil,  
8 protected from precipitation, at the Pleasant Grove Establishment that had a capacity of  
9 approximately 8,617 gallons. The Vistaspray 440 Spray Oil secondary containment unit at the  
10 Pleasant Grove Establishment needed to have a holding capacity (including other containers and  
11 appurtenances) of 10,073 gallons.

12 51. On or about January 12, 2018, Respondent's new Vistaspray 440 Spray Oil  
13 secondary containment unit at the Pleasant Grove Establishment failed to have a holding capacity  
14 of at least 100% of the volume of the largest stationary pesticide container plus the volume  
15 displaced by other containers and appurtenances within the unit, as required by 40 C.F.R. §  
16 165.85(c)(1).

17 52. On or about January 12, 2018, Respondent violated Section 12(a)(2)(S) of FIFRA, 7  
18 U.S.C. § 136j(a)(2)(S), by failing to have a holding capacity of at least 100% of the volume of  
19 the largest stationary pesticide container plus the volume displaced by other containers and  
20 appurtenances within the unit for its new Vistaspray 440 Spray Oil secondary containment unit at  
21 the Pleasant Grove Establishment, as required by 40 C.F.R. § 165.85(c)(1).

## 22 SWETZER ROAD ESTABLISHMENT

### 23 COUNTS 4-5: Distribution or Sale of a Misbranded Pesticide

24 53. When pesticide products are stored in bulk containers, whether mobile or stationary,  
25 which remain in the custody of the user, a copy of the label or labeling, including all appropriate  
26 directions for use, must be securely attached to the container in the immediate vicinity of the  
27 discharge control valve. 40 C.F.R. § 156.10(a)(4)(ii)(B). Every pesticide product shall bear a  
28 label containing, *inter alia*, the net contents as prescribed in paragraph (d) of this section and the



1 producing establishment number as prescribed in paragraph (f) of this section. 40 C.F.R. §  
2 156.10(a)(1). Pursuant to Section 2(q)(1)(A) of the Act, a pesticide is misbranded if its labeling  
3 is false or misleading in any particular including both pesticidal and non-pesticidal claims. 40  
4 C.F.R. § 156.10(a)(5).

5 54. On or about January 12, 2018, Respondent “distributed or sold” the pesticide,  
6 Roundup PowerMax, in a 6,500 gallon bulk stationary pesticide container at the Swetzer Road  
7 Establishment, as that term is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), by holding  
8 the pesticide for distribution, sale, or shipment.

9 55. On or about November 14, 2019, Respondent “distributed or sold” the pesticide,  
10 Roundup PowerMax, in a 6,500 gallon bulk stationary pesticide container at the Swetzer Road  
11 Establishment, as that term is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), by holding  
12 the pesticide for distribution, sale, or shipment.

13 56. On or about January 12, 2018, and November 14, 2019, Respondent failed to have a  
14 label attached to the 6,500 gallon bulk stationary pesticide container containing Roundup  
15 PowerMax at the Swetzer Road Establishment that clearly marked or identified the net contents  
16 or producing establishment number, as required by 40 C.F.R. §§ 156.10(a)(4)(ii)(B) and  
17 156.10(a)(1). Moreover, the presence of multiple producing establishment numbers on multiple  
18 labels attached to the 6,500 gallon bulk stationary pesticide container containing Roundup  
19 PowerMax at the Swetzer Road Establishment resulted in contradictory or confusing claims that  
20 inherently rendered the labeling as “false or misleading” per 40 C.F.R. § 156.10(a)(5).

21 57. Respondent’s failure to clearly mark or identify the net contents or producing  
22 establishment number on the label attached to the 6,500 gallon bulk stationary pesticide container  
23 containing Roundup PowerMax at the Swetzer Road Establishment, as required by 40 C.F.R. §§  
24 156.10(a)(4)(ii)(B) and 156.10(a)(1), as well as the “false or misleading” labeling identified per  
25 40 C.F.R. § 156.10(a)(5), constitutes “misbranding,” as that term is defined by Section  
26 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).

27 58. Consequently, on or about January 12, 2018, and November 14, 2019, Respondent’s  
28 distribution or sale of the pesticide, Roundup PowerMax, in a 6,500 gallon bulk stationary

1 pesticide container at the Swetzer Road Establishment constitutes two violations of Section  
2 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), which prohibits a person from distributing or  
3 selling a misbranded pesticide.

4 COUNTS 6-7: Production of a Pesticide in an Unregistered Establishment

5 59. In calendar years 2018 and 2019, Respondent repackaged the registered pesticide,  
6 Roundup PowerMax, at the Swetzer Road Establishment and is therefore a “producer,” as that  
7 term is defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 165.3.

8 60. At all times relevant to this CAFO, Respondent, by repackaging the pesticide,  
9 Roundup PowerMax, at the Swetzer Road Establishment, operated a pesticide-producing facility  
10 that is an “establishment,” as that term is defined by Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd),  
11 and 40 C.F.R. § 165.3.

12 61. At all times relevant to this CAFO, Respondent’s pesticide-producing establishment  
13 known as the Swetzer Road Establishment was not registered with EPA, as required pursuant to  
14 Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

15 62. By producing the pesticide, Roundup PowerMax, in 2018 and 2019 at the pesticide  
16 production establishment known as the Swetzer Road Establishment, which was not registered  
17 with EPA, Respondent violated Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

18 63. By violating Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), in 2018 and 2019,  
19 Respondent committed two violations of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

20 COUNT 8: Failure to Meet Capacity Requirements for a New Containment Pad

21 64. New containment pads in pesticide dispensing areas must meet the capacity  
22 requirements set forth at 40 C.F.R. § 165.85(c). In particular, new containment pads in pesticide  
23 dispensing areas which have a pesticide container or pesticide-holding equipment with a volume  
24 of 750 gallons or greater must have a holding capacity of at least 750 gallons. 40 C.F.R. §  
25 165.85(c)(3).

26 65. On or about January 12, 2018, a CDPR inspector observed a new containment pad  
27 located in the Roundup PowerMax pesticide dispensing area at the Swetzer Road Establishment  
28 that had pesticide-holding equipment with a volume of 750 gallons or greater. The Roundup

1 PowerMax containment pad at the Swetzer Road Establishment had a holding capacity of  
2 approximately zero gallons (the loading was done on an unimproved surface).

3 66. On or about January 12, 2018, Respondent's new Roundup PowerMax containment  
4 pad at the Swetzer Road Establishment failed to have a holding capacity of at least 750 gallons,  
5 as required by 40 C.F.R. § 165.85(c)(3).

6 67. On or about January 12, 2018, Respondent violated Section 12(a)(2)(S) of FIFRA, 7  
7 U.S.C. § 136j(a)(2)(S), by failing to have a holding capacity of at least 750 gallons for its new  
8 Roundup PowerMax containment pad at the Swetzer Road Establishment, as required by 40  
9 C.F.R. § 165.85(c)(3).

10 D. RESPONDENT'S ADMISSIONS

11 68. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,  
12 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over  
13 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section  
14 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the  
15 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any  
16 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the  
17 proposed Final Order contained in this CAFO.

18 E. CIVIL ADMINISTRATIVE PENALTY

19 69. In full and final settlement of the violations specifically alleged in Section I.C of this  
20 CAFO, Respondent shall pay a civil administrative penalty of FIFTY THOUSAND, FIVE  
21 HUNDRED, AND SEVENTY-EIGHT DOLLARS (\$50,578). Respondent shall pay this civil  
22 penalty within thirty (30) days of the effective date of this CAFO. The civil penalty shall be paid  
23 by remitting a certified or cashier's check, including the name and docket number of this case,  
24 for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other  
25 methods listed below) and sent as follows:

26 Regular Mail:

27 U.S. Environmental Protection Agency  
28 Fines and Penalties  
Cincinnati Finance Center

PO Box 979077  
St. Louis, MO 63197-9000

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York, NY 10045

Beneficiary = U.S. Environmental Protection Agency

Certified or Overnight Mail:

U.S. Bank

1005 Convention Plaza

Mail Station SL-MO-C2GL

ATTN Box 979077

St. Louis, MO 63101

ACH (also known as Remittance Express or REX):

Automated Clearinghouse (ACH) payments to EPA can be made through the U.S. Treasury using the following information:

U.S. Treasury REX/Cashlink ACH Receiver

ABA = 051036706

Account = 31006, Environmental Protection Agency

CTX Format Transaction Code 22 – checking

Physical location of U.S. Treasury facility:

5700 Rivertech Court

Riverdale, MD 20737

Remittance Express (REX) = (866) 234-5681

On Line Payment:

This payment option can be accessed from the information below:

[www.pay.gov](http://www.pay.gov)

Enter “SFO 1.1” in the search field

Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA’s Cincinnati Finance Center at (513) 487-2091.

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a

transmittal letter, indicating Respondent's name, the case title, and docket number, to the following regular mail or email addresses:

Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
R9HearingClerk@epa.gov

Brandon Boatman  
Toxics Section  
Enforcement and Compliance Assurance Division (ENF-2-3)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
boatman.brandon@epa.gov

70. Respondent shall not use payment of any penalty under this CAFO as a tax deduction from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to use such payment as a tax deduction.

71. If Respondent fails to pay the assessed civil administrative penalty of FIFTY THOUSAND, FIVE HUNDRED, AND SEVENTY-EIGHT DOLLARS (\$50,578), as identified in Paragraph 69, by the deadline specified in that Paragraph, then Respondent shall pay a stipulated penalty to EPA of FIVE HUNDRED DOLLARS (\$500) per day in addition to the assessed penalty. Stipulated penalties shall accrue until such time as the assessed penalty and all accrued stipulated penalties are paid and shall become due and payable upon EPA's written request. Failure to pay the civil administrative penalty specified in Paragraph 69 by the deadline specified in that Paragraph may also lead to any or all of the following actions:

(1) EPA may refer the debt to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and appropriateness of the assessed penalty or of this CAFO is not subject to review in any such collection proceeding.

(2) The U.S. Government may collect the debt by administrative offset (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a



1 person to satisfy the debt the person owes the U.S. Government), which includes, but is not  
2 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40  
3 C.F.R. §§ 13(C) and 13(H).

4 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke  
5 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing  
6 business with EPA or engaging in programs EPA sponsors or funds.

7 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.  
8 Government may assess interest, administrative handling charges, and nonpayment penalties  
9 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the  
10 civil administrative penalty specified in Paragraph 69 by the deadline specified in that Paragraph.

11 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.  
12 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established  
13 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,  
14 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty  
15 (30) days of the effective date of this CAFO.

16 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.  
17 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,  
18 based on either actual or average cost incurred (including both direct and indirect costs), for  
19 every month in which any portion of the assessed penalty is more than thirty (30) days past due.

20 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)  
21 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,  
22 may be assessed on all debts more than ninety (90) days delinquent.

## 23 F. CERTIFICATION OF COMPLIANCE

24 72. In executing this CAFO, Respondent certifies that the information it has supplied  
25 concerning this matter was at the time of submission, and is at the time of signature to this  
26 CAFO, truthful, accurate, and complete; and that Respondent has corrected the violations alleged  
27 in Section I.C of this CAFO. Under 18 U.S.C. § 1001, submitting false or misleading  
28

1 information can result in significant penalties, including the possibility of fines and  
2 imprisonment for knowing submission of such information.

### 3 G. RETENTION OF RIGHTS

4 73. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's  
5 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C  
6 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil  
7 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,  
8 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal  
9 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it  
10 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address  
11 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

12 74. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's  
13 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,  
14 and permits.

### 15 H. ATTORNEYS' FEES AND COSTS

16 75. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in  
17 this proceeding.

### 18 I. EFFECTIVE DATE

19 76. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be  
20 effective on the date that the Final Order contained in this CAFO, having been approved and  
21 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

### 22 J. BINDING EFFECT

23 77. The undersigned representative of Complainant and the undersigned representative of  
24 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions  
25 of this CAFO and to bind the party he or she represents to this CAFO.

26 78. The provisions of this CAFO shall apply to and be binding upon Respondent and its  
27 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,  
28 and assigns.

FOR RESPONDENT BEAR RIVER SUPPLY INC.:

04/06/2021

DATE

*Richard French*

RICHARD FRENCH

President

Bear River Supply Inc.

218 Pleasant Grove Road

Rio Oso, CA 95674

FOR COMPLAINANT EPA:

4/13/2021

DATE

MATTHEW  
SALAZAR

Digitally signed by  
MATTHEW SALAZAR  
Date: 2021.04.13  
13:30:35 -07'00'

MATT SALAZAR, P.E.

Manager, Toxics Section

Enforcement and Compliance Assurance Division

U.S. Environmental Protection Agency, Region IX

II. FINAL ORDER

EPA and Bear River Supply Inc. having entered into the foregoing Consent Agreement,  
IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2021-<sup>0041</sup>) be  
entered, and Respondent shall pay a civil administrative penalty in the amount of FIFTY  
THOUSAND, FIVE HUNDRED, AND SEVENTY-EIGHT DOLLARS (\$50,578) and comply  
with the terms and conditions set forth in the Consent Agreement.

STEVEN JAWGIEL

Digitally signed by STEVEN  
JAWGIEL

Date: 2021.05.03 12:53:30 -07'00'

\_\_\_\_\_  
DATE

\_\_\_\_\_  
STEVEN JAWGIEL  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region IX

## **CERTIFICATE OF SERVICE**

This is to certify that the fully executed Consent Agreement and Final Order in the matter of Bear River Supply (FIFRA-09-2021-0041) was filed with the Regional Hearing Clerk and that a true and correct copy of the same was sent to the following parties:

**FOR RESPONDENT:**

Richard French  
President  
Bear River Supply Inc.  
218 Pleasant Grove Road Rio Oso, CA 95674  
RFrench@bearriversupply.com

**FOR COMPLAINANT:**

Brandon Boatman  
Environmental Enforcement  
U.S. EPA, Region 9, Pacific Islands Contact Office  
Prince Kuhio Federal Building  
300 Ala Moana Blvd. #5-152  
Honolulu, HI 96850  
Boatman.Brandon@epa.gov

Date: \_\_\_\_\_

\_\_\_\_\_  
Steven Armsey  
Regional Hearing Clerk  
EPA - Region IX